

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SEAN SMITH and CRYSTAL SMITH,

Plaintiffs,

v.

CSAA FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

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Case No.:17-cv-01302-D

ORDER

Before the Court is a Motion to Strike Exhibit 2 from Plaintiffs' Response to Defendant CSAA's Motion for Partial Summary Judgment [Doc. No. 59] filed by CSAA Fire and Casualty Insurance Company (the "Defendant"). Plaintiffs Sean Smith and Crystal Smith (the "Plaintiffs") have filed their Response [Doc. No. 61] to which Defendant has replied [Doc. No. 63].

BACKGROUND

This case arises from an insurance claim for damages to Plaintiffs' home. Plaintiffs' First Amended Complaint, Doc. No. 19 at 1, ¶ 2. Plaintiffs allege the damage was caused by an earthquake on November 7, 2016. *Id.* at 1, ¶ 3. Defendant denied Plaintiffs' insurance claim on the basis that the damage was instead caused by poor construction and soil changes. Response to Motion to Strike Exhibit 2, Doc. No. 61 at 3. Plaintiffs brought this action alleging breach of contract and bad faith. *See* First Amended Complaint.

Defendant filed a Partial Motion for Summary Judgment and Supporting Brief [Doc. No. 48] arguing it is entitled to judgement on Plaintiffs' bad faith claim and request for punitive damages as there is no genuine dispute as to any material fact. Motion for Partial Summary Judgment, Doc. No. 48, at 1. Plaintiffs responded and, as part of their Response, included the exhibit at issue. Plaintiffs' Response and Objection to Defendant's Motion for Partial Summary Judgement. Doc. No. 53, Ex-2. Defendant subsequently filed this Motion to Strike Exhibit 2. Doc. No. 59.

STANDARD OF DECISION

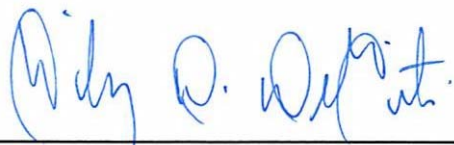
The language and corresponding advisory committee notes of Fed. R. Civ. P. 56(c)(2) explain that "[a] party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Congress amended Rule 56 in 2010 to include this language. Before this amendment, parties properly challenged evidence used in a summary judgment motion by filing a motion to strike. *See* Rule 56, advisory committee's note (2010) ("There is no need to file a separate motion to strike."). "The plain meaning of these provisions show[s] that objecting to the admissibility of evidence supporting a summary judgment motion is now a part of summary judgment procedure, rather than a separate motion to be handled preliminarily." *Campbell v. Shinseki*, 546 F. App'x 874, 879 (11th Cir. 2013); *Cutting Underwater Techns. USA, Inc. v. Eni U.S. Operating Co.*, 671 F.3d 512, 515 (5th Cir.2012) ("[I]t is no longer necessary for a party to file such a motion; instead, a party may simply object to the material.").

DISCUSSION

In keeping with the 2010 changes to Rule 56(c)(2), the Court will consider Defendant's Motion to Strike Exhibit 2 from Plaintiffs' Response to Defendant CSAA's Motion for Partial Summary Judgment as an objection to the admissibility of Exhibit 2. This Motion and all related filings will be addressed as such in the Court's forthcoming Order ruling on Defendant's Motion for Partial Summary Judgment.

IT IS THEREFORE ORDERED that Defendant's Motion to Strike Exhibit 2 from Plaintiffs' Response to Defendant CSAA's Motion for Partial Summary Judgment is **DENIED**.

IT IS SO ORDERED this 6th day of September 2019.



TIMOTHY D. DeGIUSTI
Chief United States District Judge